

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 166**  
FINAL READING

Introduced by Hudkins, 21; Aguilar, 35; Cudaback, 36; Dierks, 40;  
Jensen, 20; Jones, 43; Kruse, 13; Vrtiska, 1;  
Wehrbein, 2

Read first time January 4, 2001

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to alcohol; to amend sections 37-1254.01 and  
2 60-4,182, Reissue Revised Statutes of Nebraska, and  
3 sections 37-1254.02 and 60-6,196, Revised Statutes  
4 Supplement, 2000; to reduce the alcohol concentration  
5 limits allowed while operating a motorboat or motor  
6 vehicle; to harmonize provisions; and to repeal the  
7 original sections.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 37-1254.01, Reissue Revised Statutes  
2 of Nebraska, is amended to read:

3           37-1254.01. (1) No person shall be in the actual  
4 physical control of any motorboat under propulsion upon the waters  
5 of this state:

6           (a) While under the influence of alcohol or of any  
7 controlled substance as defined in section 28-401;

8           (b) When such person has a concentration of  
9 ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of  
10 alcohol per one hundred milliliters of his or her blood;

11           (c) When such person has a concentration of  
12 ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of  
13 alcohol per two hundred ten liters of his or her breath; or

14           (d) When such person has a concentration of  
15 ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of  
16 alcohol per one hundred milliliters of his or her urine.

17           (2) Any person who is in the actual physical control of  
18 any motorboat under propulsion upon the waters of this state while  
19 in a condition described in subsection (1) of this section shall be  
20 guilty of a Class II misdemeanor. Upon conviction the court shall,  
21 as part of the judgment of conviction, order such person not to be  
22 in the physical control of a motorboat under propulsion upon the  
23 waters of this state for any purpose for a period of six months  
24 from the date of such conviction, except that if the court places  
25 such person on probation or suspends the sentence for any reason,  
26 the court shall, as one of the conditions of probation or sentence  
27 suspension, order such person not to be in the physical control of  
28 any motorboat under propulsion upon the waters of this state for

1 any purpose for a period of sixty days from the date of the order.

2 (3) Any city or village may enact ordinances in  
3 conformance with this section and section 37-1254.02.

4 (4) At the discretion of the court, any person convicted  
5 of violating this section or violating any city or village  
6 ordinance adopted in conformance with this section may be required  
7 to attend, at the convicted person's expense, an alcoholism  
8 treatment program as a term of probation.

9 Sec. 2. Section 37-1254.02, Revised Statutes Supplement,  
10 2000, is amended to read:

11 37-1254.02. (1) Any person who has in his or her actual  
12 physical control a motorboat under propulsion upon the waters of  
13 this state shall be deemed to have given his or her consent to  
14 submit to a chemical test of his or her blood, breath, or urine for  
15 the purpose of determining the amount of alcohol content in such  
16 blood, breath, or urine.

17 (2) Any law enforcement officer who has been duly  
18 authorized to make arrests for violations of laws of this state or  
19 ordinances of any city or village may require any person arrested  
20 for any offense arising out of acts alleged to have been committed  
21 while the person was in the actual physical control of a motorboat  
22 under propulsion upon the waters of this state under the influence  
23 of alcohol to submit to a chemical test of his or her blood,  
24 breath, or urine for the purpose of determining the alcohol content  
25 of such blood, breath, or urine when the officer has reasonable  
26 grounds to believe that the person was in the actual physical  
27 control of a motorboat under propulsion upon the waters of this  
28 state while under the influence of alcohol.

1           (3) Any law enforcement officer who has been duly  
2 authorized to make arrests for violations of laws of this state or  
3 ordinances of any city or village may require any person who has in  
4 his or her actual physical control a motorboat under propulsion  
5 upon the waters of this state to submit to a preliminary test of  
6 his or her breath for alcohol content if the officer has reasonable  
7 grounds to believe that such person has alcohol in his or her body  
8 or has committed any violation of this section and section  
9 37-1254.01. Any person who refuses to submit to such preliminary  
10 breath test or whose preliminary breath test results indicate an  
11 alcohol content of ~~ten-hundredths~~ eight-hundredths of one gram or  
12 more by weight of alcohol per two hundred ten liters of his or her  
13 breath shall be placed under arrest. Any person who refuses to  
14 submit to such preliminary breath test shall be guilty of a Class  
15 III misdemeanor.

16           (4) Any person arrested pursuant to this section may,  
17 upon the direction of a law enforcement officer, be required to  
18 submit to a chemical test of his or her blood, breath, or urine for  
19 a determination of the alcohol content. Any person who refuses to  
20 submit to a chemical blood, breath, or urine test required pursuant  
21 to this section shall be guilty of a Class II misdemeanor, and the  
22 court shall, as part of the judgment of conviction, order such  
23 person not to be in the actual physical control of any motorboat  
24 under propulsion upon the waters of this state for any purpose for  
25 a period of six months from the date of such conviction. If the  
26 court places such person on probation or suspends the sentence for  
27 any reason, the court shall, as one of the conditions of probation  
28 or sentence suspension, order such person not to be in the actual

1 physical control of any motorboat under propulsion upon the waters  
2 of this state for any purpose for a period of sixty days from the  
3 date of the order.

4 (5) Any person who is required to submit to a preliminary  
5 breath test or to a chemical blood, breath, or urine test pursuant  
6 to this section shall be advised of the consequences of refusing to  
7 submit to such test.

8 Sec. 3. Section 60-4,182, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 60-4,182. In order to prevent and eliminate successive  
11 traffic violations, there is hereby provided a point system dealing  
12 with traffic violations as disclosed by the files of the director.  
13 The following point system shall be adopted:

14 (1) Conviction of motor vehicle homicide -- 12 points;

15 (2) Third offense drunken driving in violation of any  
16 city or village ordinance or of section 60-6,196, as disclosed by  
17 the records of the director, regardless of whether the trial court  
18 found the same to be a third offense -- 12 points;

19 (3) Failure to stop and render aid as required under the  
20 laws of this state in the event of involvement in a motor vehicle  
21 accident resulting in the death or personal injury of another -- 6  
22 points;

23 (4) Failure to stop and render aid as required under the  
24 laws of this state or any city or village ordinance in the event of  
25 a motor vehicle accident resulting in property damage if such  
26 accident is reported by the owner or operator within twelve hours  
27 from the time of the accident -- 4 points, otherwise -- 8 points,  
28 and for purposes of this subdivision a telephone call or other

1 notification to the appropriate peace officers shall be deemed to  
2 be a report;

3 (5) Driving a motor vehicle while under the influence of  
4 alcoholic liquor or any drug or when such person has a  
5 concentration of ~~ten-hundredths~~ eight-hundredths of one gram or  
6 more by weight of alcohol per one hundred milliliters of his or her  
7 blood or urine or per two hundred ten liters of his or her breath  
8 in violation of any city or village ordinance or of section  
9 60-6,196 -- 6 points;

10 (6) Willful reckless driving in violation of any city or  
11 village ordinance or of section 60-6,214 or 60-6,217 -- 6 points;

12 (7) Careless driving in violation of any city or village  
13 ordinance or of section 60-6,212 -- 4 points;

14 (8) Negligent driving in violation of any city or village  
15 ordinance -- 3 points;

16 (9) Reckless driving in violation of any city or village  
17 ordinance or of section 60-6,213 -- 5 points;

18 (10) Speeding in violation of any city or village  
19 ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:

20 (a) Not more than five miles per hour over the speed  
21 limit -- 1 point;

22 (b) More than five miles per hour but not more than ten  
23 miles per hour over the speed limit -- 2 points; and

24 (c) More than ten miles per hour over the speed limit --  
25 3 points, except that one point shall be assessed upon conviction  
26 of exceeding by not more than ten miles per hour, two points shall  
27 be assessed upon conviction of exceeding by more than ten miles per  
28 hour but not more than fifteen miles per hour, and three points

1 shall be assessed upon conviction of exceeding by more than fifteen  
2 miles per hour the speed limits provided for in subdivision (1)(e),  
3 (f), or (g) of section 60-6,186;

4 (11) Failure to yield to a pedestrian not resulting in  
5 bodily injury to a pedestrian -- 2 points;

6 (12) Failure to yield to a pedestrian resulting in bodily  
7 injury to a pedestrian -- 4 points; and

8 (13) All other traffic violations involving the operation  
9 of motor vehicles by the operator for which reports to the  
10 Department of Motor Vehicles are required under sections 60-497.01  
11 and 60-497.02, not including violations involving an occupant  
12 protection system pursuant to section 60-6,270, parking violations,  
13 violations for operating a motor vehicle without a valid operator's  
14 license in the operator's possession, muffler violations,  
15 overwidth, overheight, or overlength violations, motorcycle or  
16 moped protective helmet violations, or overloading of trucks -- 1  
17 point.

18 All such points shall be assessed against the driving  
19 record of the operator as of the date of the violation for which  
20 conviction was had. Points may be reduced by the department under  
21 section 60-4,188.

22 In all cases, the forfeiture of bail not vacated shall be  
23 regarded as equivalent to the conviction of the offense with which  
24 the operator was charged.

25 The point system shall not apply to persons convicted of  
26 traffic violations committed while operating a bicycle.

27 Sec. 4. Section 60-6,196, Revised Statutes Supplement,  
28 2000, is amended to read:

1                   60-6,196. (1) It shall be unlawful for any person to  
2 operate or be in the actual physical control of any motor vehicle:

3                   (a) While under the influence of alcoholic liquor or of  
4 any drug;

5                   (b) When such person has a concentration of  
6 ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of  
7 alcohol per one hundred milliliters of his or her blood; or

8                   (c) When such person has a concentration of  
9 ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of  
10 alcohol per two hundred ten liters of his or her breath.

11                   (2) Any person who operates or is in the actual physical  
12 control of any motor vehicle while in a condition described in  
13 subsection (1) of this section shall be guilty of a crime and upon  
14 conviction punished as follows:

15                   (a) If such person has not had a conviction in the twelve  
16 years prior to the date of the current conviction (i) under this  
17 section, (ii) under a city or village ordinance enacted pursuant to  
18 this section, or (iii) under a law of another state, if at the time  
19 of the conviction under the law of such other state, the offense  
20 for which such person was convicted would have been a violation  
21 under this section, such person shall be guilty of a Class W  
22 misdemeanor, and the court shall, as part of the judgment of  
23 conviction, order such person not to drive any motor vehicle for  
24 any purpose for a period of six months from the date ordered by the  
25 court and shall order that the operator's license of such person be  
26 revoked for a like period. Such revocation shall be administered  
27 upon sentencing, upon final judgment of any appeal or review, or  
28 upon the date that any probation is revoked. Such revocation shall



1 not run concurrently with any jail term imposed.

2           If the court places such person on probation or suspends  
3 the sentence for any reason, the court shall, as one of the  
4 conditions of probation or sentence suspension, order such person  
5 not to drive any motor vehicle for any purpose for a period of  
6 sixty days from the date of the order unless otherwise authorized  
7 by an order issued pursuant to section 60-6,211.05, and such order  
8 of probation shall also include, as one of its conditions, the  
9 payment of a four-hundred-dollar fine;

10           (b) If such person has had one conviction in the twelve  
11 years prior to the date of the current conviction (i) under this  
12 section, (ii) under a city or village ordinance enacted pursuant to  
13 this section, or (iii) under a law of another state, if at the time  
14 of the conviction under the law of such other state, the offense  
15 for which such person was convicted would have been a violation  
16 under this section, such person shall be guilty of a Class W  
17 misdemeanor, and the court shall, as part of the judgment of  
18 conviction, order such person not to drive any motor vehicle for  
19 any purpose for a period of one year from the date ordered by the  
20 court, shall order that the operator's license of such person be  
21 revoked for a like period, and shall issue an order pursuant to  
22 section 60-6,197.01 with respect to all motor vehicles owned by  
23 such person. Such orders shall be administered upon sentencing,  
24 upon final judgment of any appeal or review, or upon the date that  
25 any probation is revoked. Such orders shall not run concurrently  
26 with any jail term imposed.

27           If the court places such person on probation or suspends  
28 the sentence for any reason, the court shall, as one of the

1 conditions of probation or sentence suspension, order such person  
2 not to drive any motor vehicle in the State of Nebraska for any  
3 purpose for a period of one year from the date of the order unless  
4 otherwise authorized by an order issued pursuant to section  
5 60-6,211.05 and shall issue an order pursuant to section  
6 60-6,197.01 with respect to all motor vehicles owned by such  
7 person, and such order of probation shall also include, as  
8 conditions, the payment of a five-hundred-dollar fine and either  
9 confinement in the city or county jail for five days or the  
10 imposition of not less than two hundred forty hours of community  
11 service;

12 (c) If such person has had two convictions in the twelve  
13 years prior to the date of the current conviction (i) under this  
14 section, (ii) under a city or village ordinance enacted pursuant to  
15 this section, (iii) under a law of another state, if at the time of  
16 the conviction under the law of such other state, the offense for  
17 which such person was convicted would have been a violation under  
18 this section, or (iv) as described in subdivisions (i) through  
19 (iii) of this subdivision, such person shall be guilty of a Class W  
20 misdemeanor, and the court shall, as part of the judgment of  
21 conviction, order such person not to drive any motor vehicle in the  
22 State of Nebraska for any purpose for a period of fifteen years  
23 from the date ordered by the court, shall order that the operator's  
24 license of such person be revoked for a like period, and shall  
25 issue an order pursuant to section 60-6,197.01 with respect to all  
26 motor vehicles owned by such person. Such orders shall be  
27 administered upon sentencing, upon final judgment of any appeal or  
28 review, or upon the date that any probation is revoked. Such

1 orders shall not run concurrently with any jail term imposed.

2           If the court places such person on probation or suspends  
3 the sentence for any reason, the court shall, as one of the  
4 conditions of probation or sentence suspension, order such person  
5 not to drive any motor vehicle in the State of Nebraska for any  
6 purpose for a period of one year unless otherwise authorized by an  
7 order issued pursuant to section 60-6,211.05 and shall issue an  
8 order pursuant to section 60-6,197.01 with respect to all motor  
9 vehicles owned by such person, and such order of probation shall  
10 also include, as conditions, the payment of a six-hundred-dollar  
11 fine and either confinement in the city or county jail for ten days  
12 or the imposition of not less than four hundred eighty hours of  
13 community service; and

14           (d) If such person has had three or more convictions in  
15 the twelve years prior to the date of the current conviction (i)  
16 under this section, (ii) under a city or village ordinance enacted  
17 pursuant to this section, (iii) under a law of another state, if at  
18 the time of the conviction under the law of such other state, the  
19 offense for which such person was convicted would have been a  
20 violation under this section, or (iv) as described in subdivisions  
21 (i) through (iii) of this subdivision, such person shall be guilty  
22 of a Class IV felony, and the court shall, as part of the judgment  
23 of conviction, order such person not to drive any motor vehicle in  
24 the State of Nebraska for any purpose for a period of fifteen years  
25 from the date ordered by the court, shall order that the operator's  
26 license of such person be revoked for a like period, and shall  
27 issue an order pursuant to section 60-6,197.01 with respect to all  
28 motor vehicles owned by such person. Such orders shall be

1 administered upon sentencing, upon final judgment of any appeal or  
2 review, or upon the date that any probation is revoked. Such  
3 orders shall not run concurrently with any jail term imposed. The  
4 court shall also sentence such person to serve at least ten days'  
5 imprisonment in the city or county jail or an adult correctional  
6 facility.

7           If the court places such person on probation or suspends  
8 the sentence for any reason, the court shall, as one of the  
9 conditions of probation or sentence suspension, order such person  
10 not to drive any motor vehicle in the State of Nebraska for any  
11 purpose for a period of one year unless otherwise authorized by an  
12 order issued pursuant to section 60-6,211.05 and shall issue an  
13 order pursuant to section 60-6,197.01 with respect to all motor  
14 vehicles owned by such person, and such order of probation shall  
15 also include, as conditions, the payment of a one-thousand-dollar  
16 fine and either confinement in the city or county jail for ten days  
17 or the imposition of not less than four hundred eighty hours of  
18 community service.

19           (3) For each conviction under this section, the court  
20 shall as part of the judgment of conviction make a finding on the  
21 record as to the number of the defendant's prior convictions in the  
22 twelve years prior to the date of the current conviction (a) under  
23 this section, (b) under a city or village ordinance enacted  
24 pursuant to this section, or (c) under a law of another state, if  
25 at the time of the conviction under the law of such other state,  
26 the offense for which the defendant was convicted would have been a  
27 violation under this section. In any case charging a violation  
28 under this section, the prosecutor or investigating agency shall

1 use due diligence to obtain the defendant's driving record from the  
2 Department of Motor Vehicles and the defendant's driving record  
3 from other states where he or she is known to have resided within  
4 the last twelve years. The prosecutor shall certify to the court,  
5 prior to sentencing, that such action has been taken. The  
6 prosecutor shall present as evidence for purposes of sentence  
7 enhancement under this section an authenticated copy of a prior  
8 conviction in another state. The authenticated copy shall be prima  
9 facie evidence of such prior conviction. The defendant shall be  
10 given the opportunity to review the record of his or her prior  
11 convictions, bring mitigating facts to the attention of the court  
12 prior to sentencing, and make objections on the record regarding  
13 the validity of such prior convictions.

14 (4) For purposes of this section, the twelve-year period  
15 shall be computed from the date of the prior offense to the date of  
16 the offense which resulted in the current conviction and the terms  
17 conviction under this section and prior conviction shall include  
18 any conviction (a) under this section as it existed at the time of  
19 such conviction regardless of subsequent amendments to this  
20 section, (b) under a city or village ordinance enacted pursuant to  
21 this section regardless of subsequent amendments to this section,  
22 or (c) under a law of another state, if at the time of the  
23 conviction under the law of such other state, the offense for which  
24 the person was convicted would have been a violation under this  
25 section regardless of subsequent amendments to this section.

26 (5) Any period of revocation or order not to drive  
27 imposed under this section shall be reduced by any period imposed  
28 under section 60-6,206. Any period of revocation or order not to

1 drive imposed under subdivision (2)(a) of this section shall not  
2 prohibit the operation of a motor vehicle under the terms and  
3 conditions of an employment driving permit issued pursuant to  
4 subsection (2) of section 60-6,206.

5 (6) Any person operating a motor vehicle on the highways  
6 or streets of this state while his or her operator's license has  
7 been revoked pursuant to subdivision (2)(c) or (2)(d) of this  
8 section shall be guilty of a Class IV felony. If such person has  
9 had a conviction under this subsection prior to the date of the  
10 current conviction under this subsection, such person shall be  
11 guilty of a Class III felony.

12 (7) Any city or village may enact ordinances in  
13 conformance with this section and section 60-6,197. Upon  
14 conviction of any person of a violation of such a city or village  
15 ordinance, the provisions of this section with respect to the  
16 operator's license of such person shall be applicable the same as  
17 though it were a violation of this section.

18 (8) Any person who has been convicted of driving while  
19 intoxicated shall, during a presentence evaluation, submit to and  
20 participate in an alcohol assessment. The alcohol assessment shall  
21 be paid for by the person convicted of driving while intoxicated.  
22 At the time of sentencing, the judge, having reviewed the  
23 assessment results, may then order the convicted person to follow  
24 through on the alcohol assessment results at the convicted person's  
25 expense in addition to any penalties deemed necessary.

26 Sec. 5. Original sections 37-1254.01 and 60-4,182,  
27 Reissue Revised Statutes of Nebraska, and sections 37-1254.02 and  
28 60-6,196, Revised Statutes Supplement, 2000, are repealed.